

## HOUSE BILL NO. 200

INTRODUCED BY D. WANZENRIED

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A TAX CREDIT TO BE ADMINISTERED BY THE STATE AUDITOR FOR ELIGIBLE SMALL EMPLOYERS WHO PROVIDE HEALTH CARE COVERAGE FOR THEIR ELIGIBLE EMPLOYEES; PROVIDING THAT THE TAX CREDIT MAY BE CLAIMED WHEN FILING TAX RETURNS OR THAT CERTAIN ELIGIBLE SMALL EMPLOYERS MAY RECEIVE DIRECT PAYMENTS OF THE TAX CREDIT TO BE USED IN PAYING PREMIUMS FOR HEALTH CARE COVERAGE; ESTABLISHING ELIGIBILITY REQUIREMENTS FOR RECEIVING THE TAX CREDIT; PROVIDING RULEMAKING AUTHORITY TO IMPLEMENT THE TAX CREDIT PROGRAM; PROVIDING PENALTIES FOR WRONGFULLY OBTAINING THE TAX CREDIT; APPROPRIATING MONEY FROM THE HEALTH AND MEDICAID INITIATIVES ACCOUNT TO FUND THE TAX CREDIT PROGRAM; AMENDING SECTIONS 15-30-111, 15-30-121, 15-30-303, 15-31-511, 45-6-301, AND 53-6-1201, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Credit for small employer health insurance premium paid -- definitions.** As used in [sections 1 through 7], the following definitions apply:

(1) "Commissioner" means the commissioner of insurance of the state of Montana.

(2) "Department" means the department of revenue.

(3) "Dependent" has the meaning provided in 33-22-1803.

(4) "Eligible employee" has the meaning provided in 33-22-1803.

(5) "Eligible small employer" means an employer that employed an average of at least 2 but not more than 50 employees during the preceding calendar year and that employs at least 2 employees on the first day of the current calendar year. The term includes small employers who obtain group health plan coverage through an association of small employer groups or a purchasing pool consisting of small employer groups.

(6) "Group health plan" has the meaning provided in 33-22-140.

(7) "Premium" means the amount of money that an insurance company or a health service corporation

1 charges to provide coverage for a group health plan.

2 (8) "Related employers" means persons having a relationship described in Internal Revenue Code, 26  
3 U.S.C. 267(b).

4 (9) "Tax year" means the taxpayer's tax year for federal income tax purposes.  
5

6 **NEW SECTION. Section 2. Credit for small employer health insurance premium paid -- eligibility**  
7 **for small group coverage -- amount.** (1) An eligible small employer may claim a credit under [sections 1  
8 through 7] if the eligible small employer and any related employers:

9 (a) did not have more than the number of employees established for eligibility by the state auditor's  
10 office at the time of registering for a credit under [section 4];

11 (b) does not have any employee who received more than \$150,000 in gross compensation, including  
12 bonuses and commissions, from the small employer in the prior tax year;

13 (c) provided a group health plan for the eligible small employer's eligible employees and complied with  
14 the small employer carrier's applicable participation and contribution requirements in accordance with  
15 33-22-1811(3)(d) and applicable administrative rules;

16 (d) does not have delinquent state income tax liability owing to the department from previous years; and

17 (e) has been registered as an eligible small employer participant by the state auditor as provided in  
18 [section 4].

19 (2) The state auditor shall establish, by rule, the maximum number of eligible employees for which an  
20 eligible small employer may claim a tax credit. The number may not be less than two eligible employees or more  
21 than nine eligible employees. The number must be set to maximize the number of eligible employees receiving  
22 coverage under [sections 1 through 7]. The state auditor may not change the maximum eligible employee  
23 number more often than every 6 months. If the maximum number of allowable eligible employees is changed,  
24 the change does not disqualify registered employers with respect to the tax year for which the employer has  
25 registered.

26 (3) Except as provided in subsection (4), an eligible small employer may claim a credit as follows:

27 (a) (i) not more than \$100 per month for each eligible employee or eligible employee's spouse if the  
28 average age of the group is under 45 years of age;

29 (ii) not more than \$125 per month for each eligible employee or eligible employee's spouse if the  
30 average age of the group is 45 years of age or older; and

(b) not more than \$40 per month for each dependent, other than the eligible employee's spouse, if the eligible small employer is paying for coverage for eligible dependents, not to exceed two dependents of an eligible employee in addition to the eligible employee's spouse.

(4) An eligible small employer may not claim a credit in excess of 50% of the total premiums paid by the eligible small employer for the qualifying small group.

**NEW SECTION. Section 3. Credit for small employer health insurance premiums paid -- form of relief -- filing.** (1) An eligible small employer may:

(a) apply the credit against taxes due for the current tax year on a return filed pursuant to Title 15, chapter 30 or 31; or

(b) if the eligible small employer did not sponsor a group health plan for eligible employees during the 2 years prior to the first tax year of registration for the credits or is a new business less than 2 years old that has never sponsored a group health plan, request that the state auditor make monthly direct credit payments to the eligible small employer to be applied to premiums paid by that eligible small employer.

(2) An eligible small employer may not, in the same tax year, apply the credit against taxes due for the current tax year as provided for in subsection (1)(a) and request the state auditor to make direct credit payments as provided for in subsection (1)(b).

(3) Direct credit payments requested under subsection (1)(b) must be made by periodic payments by the state auditor to the eligible small employer claiming the credit. The state auditor shall provide by rule the time and method of making the payments. The state auditor shall also establish by rule a method for verifying the exact amount of qualifying premium paid each month by an eligible small employer in order to determine the amount of the direct credit payment to be paid to that eligible small employer.

(4) If an eligible small employer applies the credit as provided in subsection (1)(a) and the amount of the credit exceeds the eligible small employer's liability under 15-31-121, the amount of the excess must be refunded to the eligible small employer.

(5) The credit may be claimed even if the eligible small employer does not have any liability under 15-31-121. If an eligible small employer applies for the credit as provided in subsection (1)(a) and the amount of the credit exceeds the eligible small employer's liability under Title 15, chapter 30 or 31, the amount in excess must be refunded to the eligible small employer.

(6) If the credit allowed under this section is claimed by an eligible small employer that is a small

1 business corporation, as defined in 15-30-1101, or a partnership, the credit must be attributed to shareholders  
2 or partners using the same proportion to report the corporation's or partnership's income or loss for Montana  
3 income tax purposes.

4 (7) The department or the state auditor may grant a reasonable extension for filing a claim for a credit  
5 whenever, in the department's or state auditor's judgment, good cause exists. The department and the state  
6 auditor shall keep a record of each extension and the reason for granting the extension.

7 (8) (a) If a corporation that would have a claim under [sections 1 through 7] ceases doing business  
8 before filing the claim, the representative of the corporation who files a return on behalf of the corporation may  
9 file the claim.

10 (b) If a corporation that would have a claim under [sections 1 through 7] merges with or is acquired by  
11 another corporation and the merger or acquisition makes the previously eligible corporation ineligible for the  
12 credit in the future, the newly formed corporation may file for the credit for any claim period during which the  
13 former, eligible corporation was eligible.

14 (c) If a corporation that would have a claim under [sections 1 through 7] files for bankruptcy protection,  
15 the receiver may file for the credit for any claim period during which the corporation was eligible.

16  
17 **NEW SECTION. Section 4. Credit for small employer health insurance premiums paid --**  
18 **registration.** (1) (a) Each eligible small employer that proposes to claim a credit under [sections 1 through 7]  
19 must be registered each year with the state auditor. The state auditor shall begin taking registration applications  
20 for tax year 2006 on October 1, 2005.

21 (b) An eligible small employer may submit an initial registration application for the credit at any time  
22 during a year, but in order to maintain the eligible small employer's registration for the next tax year, the  
23 registration application must be renewed every year.

24 (c) For each tax year beginning on or after January 1, 2007, the state auditor shall begin accepting  
25 renewal applications on October 1 of each year and stop accepting renewal applications on October 31 of each  
26 year.

27 (d) The registration application must include the number of individuals covered as of the date of the  
28 registration application under the group health plan for which the eligible small employer is seeking a credit. If,  
29 after the initial registration, the number of individuals increases, the eligible small employer may apply to register  
30 the additional individuals, but those additional individuals may be added only at the discretion of the state

auditor, who shall limit enrollment based on available funds.

(e) The eligible small employer may not claim a credit for a number of employees, or their spouses or dependents, over the number that has been established as the maximum number of employees that an eligible small employer may have to qualify for registration for the time period in question.

(2) (a) The state auditor shall register qualifying eligible small employers in the order in which registration applications are received except that priority must be given, with respect to the applicable percentages of funding specified in subsections (2)(b) or (2)(c), to eligible small employers who have not sponsored a group health plan during the 2 years prior to registering to claim a credit or to eligible small employers that have been in business less than 2 years that have never sponsored a group health plan.

(b) Initially, 50% of the available funding must be set aside to be applied to credits for eligible small employers who have not sponsored group health plans in the previous 2 years.

(c) On October 31, 2006, the percentage in subsection (2)(b) must be reduced to a minimum of 30% if eligible small employers with priority have not exhausted their portion of the available funding by the end of the first 12 months during which the tax credit program has been in effect.

(d) On July 1, 2007, the amount reserved for previously uninsured eligible small employers must be reduced to 10% of the available funding.

(3) (a) The maximum number of qualifying eligible small employers is reached when the anticipated amount of claims for credits has reached 95% of the amount of money allocated for credits.

(b) The state auditor may establish a waiting list for applicants that are otherwise qualified for registration but may not be registered because of a lack of money.

(c) The state auditor shall mail to each eligible small employer registered under this section a notice of registration containing a unique registration number.

(d) The state auditor shall notify all persons who applied for registration and were not accepted that they were not registered and the reason that they were not registered.

(4) A prospective claimant shall apply for registration on a form provided by the state auditor. The prospective claimant shall provide:

(a) the number of eligible employees and whether the employer qualifies under [section 2];

(b) information that is necessary to estimate the amount of the credit payable to the applicant, such as ages and relationships of eligible employees;

(c) whether the prospective claimant intends to pursue the claim through the income tax process or by

1 direct credit payments;

2 (d) whether or not the claimant previously sponsored a group health plan, and if so, when and for how  
3 long; and

4 (e) any additional information determined by the state auditor to be necessary to support a claim.

5 (5) Eligible small employer participants shall reregister with the state auditor each year in order to  
6 continue eligibility.

7 (6) The state auditor shall transmit to the department, at least annually, a list of qualified and registered  
8 eligible small employers entitled to the credit and shall specify each eligible small employer's name, tax  
9 identification number, the tax year to which the credit applies, the amount of the credit, and whether the credit  
10 is to be applied against taxes due on the eligible small employer's return or paid directly to the eligible small  
11 employer as a direct credit payment. Unless there has been a finding of fraud or misrepresentation on the part  
12 of the eligible small employer regarding issues relating to eligibility for this credit, the department may not  
13 redetermine or change the state auditor's determination regarding the eligible small employer's entitlement to  
14 or the amount of the credit.

15  
16 **NEW SECTION. Section 5. Credit for health insurance premiums paid -- eligible small employers**  
17 **who are individuals or pass-through entities.** (1) There is a credit determined under [sections 1 through 7]  
18 for qualifying eligible small employers who are individuals against the taxes imposed in 15-30-103 for qualifying  
19 premiums paid by the eligible small employer for coverage of eligible employees and the eligible employees'  
20 spouses and dependents under a group health plan.

21 (2) If the eligible small employer is an S. corporation, as defined in 15-30-101, the shareholders may  
22 claim a pro rata share of the credit. If the eligible small employer is a partnership, the credit may be claimed by  
23 the partners in the same proportion used to report the partnership's income or loss for Montana income tax  
24 purposes.

25  
26 **NEW SECTION. Section 6. Penalties.** (1) The commissioner may impose the penalty provided for  
27 in 33-1-317 for a violation of [sections 1 through 7]. A lien may be placed upon the assets and property in this  
28 state of a person who fails to pay a penalty imposed under this section and may be recovered by suit by the  
29 commissioner and deposited in the special revenue account described in subsection (4).

30 (2) In addition to the penalty provided for in subsection (1), the commissioner may require a person

violating a provision of [sections 1 through 7] to make full restitution to the state, including interest of 10% a year from the date of loss, if the violation caused a tax credit to be paid to a person who was not entitled to the tax credit.

(3) A person who purposely or knowingly violates a provision of [sections 1 through 7] or purposely or knowingly makes false statements in order to receive a tax credit or direct credit payments to which that person is not entitled commits the offense of theft or the offense of unsworn falsification to authorities, which are punishable as provided in 45-6-301 and 45-7-203.

(4) Any penalties or restitution collected under this section must be deposited in the health and medicaid initiatives account established in 53-6-1201 and must be used to fund the tax credit program established in [sections 1 through 7].

**NEW SECTION. Section 7. Rulemaking authority.** The state auditor may adopt rules regarding the implementation of [sections 1 through 7], including rules regarding the administration of the direct credit payments and the registration process.

**Section 8.** Section 15-30-111, MCA, is amended to read:

**"15-30-111. Adjusted gross income.** (1) Adjusted gross income is the taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C. 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15);

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the

1 amount recovered reduced the taxpayer's Montana income tax in the year deducted;

2 (f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of  
3 the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution  
4 of the same estate or trust for the same tax period; and

5 (g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing  
6 after December 31, 2002, the amount of any dividend, to the extent that the dividend is not included in federal  
7 adjusted gross income.

8 (2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not  
9 include the following, which are exempt from taxation under this chapter:

10 (a) (i) all interest income from obligations of the United States government, the state of Montana, a  
11 county, municipality, or district, or other political subdivision of the state and any other interest income that is  
12 exempt from taxation by Montana under federal law;

13 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.  
14 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

15 (b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and  
16 including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

17 (c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income  
18 received as defined in 15-30-101;

19 (ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

20 (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total  
21 amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in  
22 excess of \$30,000 as shown on the taxpayer's return;

23 (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity  
24 income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in  
25 subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000  
26 as shown on their joint return;

27 (d) all Montana income tax refunds or tax refund credits;

28 (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

29 (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by  
30 section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on



January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions withdrawn from a family education savings account or earnings withdrawn from a family education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction is not provided for federal income tax purposes;

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-142.

(q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303;

(r) that part of the refundable credit provided for in [section 2] that reduces an eligible small employer's

1 Montana tax below zero.

2 (3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall  
3 include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as  
4 provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election  
5 is effective.

6 (4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business  
7 deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38  
8 and 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages  
9 and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and  
10 salaries were used to compute the credit. In the case of a partnership or small business corporation, the  
11 deduction must be made to determine the amount of income or loss of the partnership or small business  
12 corporation.

13 (5) Married taxpayers filing a joint federal return who are required to include part of their social security  
14 benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal  
15 base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement  
16 benefits when they file separate Montana income tax returns. The federal base must be split equally on the  
17 Montana return.

18 (6) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end  
19 of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income  
20 up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is  
21 absent from work due to the disability. If the adjusted gross income before this exclusion exceeds \$15,000, the  
22 excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the  
23 taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the  
24 limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted  
25 gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage  
26 in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting  
27 or expected to last at least 12 months.

28 (7) Married taxpayers who file a joint federal return and who make an election on the federal return to  
29 defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA,  
30 pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana

1 income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the  
2 same time period. The deferred amount must be attributed to the taxpayer making the conversion.

3 (8) An individual who contributes to one or more accounts established under the Montana family  
4 education savings program may reduce adjusted gross income by the lesser of \$3,000 or the amount of the  
5 contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000,  
6 for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions  
7 made by the spouses as being made by each spouse. The reduction in adjusted gross income under this  
8 subsection applies only with respect to contributions to an account of which the account owner, as defined in  
9 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or  
10 stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of  
11 contributions that reduced adjusted gross income.

12 (9) (a) A taxpayer may exclude up to \$5,000 from the taxpayer's adjusted gross income if the taxpayer:

13 (i) is a health care professional licensed in Montana as provided in Title 37;

14 (ii) is serving a significant portion of a designated geographic area, special population, or facility  
15 population in a federally designated health professional shortage area, a medically underserved area or  
16 population, or a federal nursing shortage county as determined by the secretary of health and human services  
17 or by the governor;

18 (iii) has had a student loan incurred as a result of health-related education; and

19 (iv) has received a loan payment made on the taxpayer's behalf by a loan repayment program described  
20 in subsection (9)(b) as an incentive to practice in Montana.

21 (b) For the purposes of subsection (9)(a), a loan repayment program includes a federal, state, or  
22 qualified private program. A qualified private loan repayment program includes a licensed health care facility,  
23 as defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the  
24 facility as a licensed health care professional. (Subsection (2)(f) terminates on occurrence of contingency--sec.  
25 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)"

26  
27 **Section 9.** Section 15-30-121, MCA, is amended to read:

28 **"15-30-121. Deductions allowed in computing net income.** (1) In computing net income, there are  
29 allowed as deductions:

30 (a) the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b), and

211 of the Internal Revenue Code, 26 U.S.C. 161 and 211, subject to the following exceptions, which are not deductible:

- (i) items provided for in 15-30-123;
- (ii) state income tax paid;
- (iii) premium payments for medical care as provided in subsection (1)(g)(i);
- (iv) long-term care insurance premium payments as provided in subsection (1)(g)(ii); and
- (v) a charitable contribution using a charitable gift annuity unless the annuity is a qualified charitable gift annuity as defined in 33-20-701;

- (b) federal income tax paid within the tax year, not to exceed \$5,000 for each taxpayer filing singly, head of household, or married filing separately or \$10,000 if married and filing jointly;

- (c) expenses of household and dependent care services as outlined in subsections (1)(c)(i) through (1)(c)(iii) and (2) and subject to the limitations and rules as set out in subsections (1)(c)(iv) through (1)(c)(vi), as follows:

- (i) expenses for household and dependent care services necessary for gainful employment incurred for:

- (A) a dependent under 15 years of age for whom an exemption can be claimed;
- (B) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income do not apply, who is unable to provide self-care because of physical or mental illness; and

- (C) a spouse who is unable to provide self-care because of physical or mental illness;

- (ii) employment-related expenses incurred for the following services, but only if the expenses are incurred to enable the taxpayer to be gainfully employed:

- (A) household services that are attributable to the care of the qualifying individual; and

- (B) care of an individual who qualifies under subsection (1)(c)(i);

- (iii) expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished by an individual or, if the individual is married during the applicable period, is furnished by the individual and the individual's spouse;

- (iv) the amounts deductible in subsections (1)(c)(i) through (1)(c)(iii), subject to the following limitations:

- (A) a deduction is allowed under subsection (1)(c)(i) for employment-related expenses incurred during the year only to the extent that the expenses do not exceed \$4,800;

- (B) expenses for services in the household are deductible under subsection (1)(c)(i) for

1 employment-related expenses only if they are incurred for services in the taxpayer's household, except that  
2 employment-related expenses incurred for services outside the taxpayer's household are deductible, but only  
3 if incurred for the care of a qualifying individual described in subsection (1)(c)(i)(A) and only to the extent that  
4 the expenses incurred during the year do not exceed:

5 (I) \$2,400 in the case of one qualifying individual;

6 (II) \$3,600 in the case of two qualifying individuals; and

7 (III) \$4,800 in the case of three or more qualifying individuals;

8 (v) if the combined adjusted gross income of the taxpayers exceeds \$18,000 for the tax year during  
9 which the expenses are incurred, the amount of the employment-related expenses incurred, to be reduced by  
10 one-half of the excess of the combined adjusted gross income over \$18,000;

11 (vi) for purposes of this subsection (1)(c):

12 (A) married couples shall file a joint return or file separately on the same form;

13 (B) if the taxpayer is married during any period of the tax year, employment-related expenses incurred  
14 are deductible only if:

15 (I) both spouses are gainfully employed, in which case the expenses are deductible only to the extent  
16 that they are a direct result of the employment; or

17 (II) the spouse is a qualifying individual described in subsection (1)(c)(i)(C);

18 (C) an individual legally separated from the individual's spouse under a decree of divorce or of separate  
19 maintenance may not be considered as married;

20 (D) the deduction for employment-related expenses must be divided equally between the spouses when  
21 filing separately on the same form;

22 (E) payment made to a child of the taxpayer who is under 19 years of age at the close of the tax year  
23 and payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) are not  
24 deductible as employment-related expenses;

25 (d) in the case of an individual, political contributions determined in accordance with the provisions of  
26 section 218(a) and (b) of the Internal Revenue Code of 1954 (now repealed) that were in effect for the tax year  
27 that ended December 31, 1978;

28 (e) that portion of expenses for organic fertilizer and inorganic fertilizer produced as a byproduct allowed  
29 as a deduction under 15-32-303 that was not otherwise deducted in computing taxable income;

30 (f) contributions to the child abuse and neglect prevention program provided for in 52-7-101, subject

1 to the conditions set forth in 15-30-156;

2 (g) the entire amount of premium payments made by the taxpayer, except premiums deducted in  
3 determining Montana adjusted gross income, or for which a credit was claimed under 15-30-128 or [section 4],  
4 for:

5 (i) insurance for medical care, as defined in 26 U.S.C. 213(d), for coverage of the taxpayer, the  
6 taxpayer's dependents, and the parents and grandparents of the taxpayer; and

7 (ii) long-term care insurance policies or certificates that provide coverage primarily for any qualified  
8 long-term care services, as defined in 26 U.S.C. 7702B(c), for:

9 (A) the benefit of the taxpayer for tax years beginning after December 31, 1994; or

10 (B) the benefit of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the  
11 taxpayer for tax years beginning after December 31, 1996;

12 (h) light vehicle registration fees, as provided for in 61-3-560 through 61-3-562, paid during the tax year;  
13 and

14 (i) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209,  
15 81-7-118, or 81-7-201.

16 (2) (a) Subject to the conditions of subsection (1)(c), a taxpayer who operates a family day-care home  
17 or a group day-care home, as these terms are defined in 52-2-703, and who cares for the taxpayer's own child  
18 and at least one unrelated child in the ordinary course of business may deduct employment-related expenses  
19 considered to have been paid for the care of the child.

20 (b) The amount of employment-related expenses considered to have been paid by the taxpayer is equal  
21 to the amount that the taxpayer charges for the care of a child of the same age for the same number of hours  
22 of care. The employment-related expenses apply regardless of whether any expenses actually have been paid.  
23 Employment-related expenses may not exceed the amounts specified in subsection (1)(c)(iv)(B).

24 (c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the  
25 deduction under this subsection (2)."

26  
27 **Section 10.** Section 15-30-303, MCA, is amended to read:

28 **"15-30-303. Confidentiality of tax records.** (1) Except as provided in subsections (7) and (8) or in  
29 accordance with a proper judicial order or as otherwise provided by law, it is unlawful to divulge or make known  
30 in any manner:

1 (a) the amount of income or any particulars set forth or disclosed in any individual report or individual  
2 return required under this chapter or any other information secured in the administration of this chapter; or

3 (b) any federal return or federal return information disclosed on any return or report required by rule of  
4 the department or under this chapter.

5 (2) (a) The officers charged with the custody of the reports and returns may not be required to produce  
6 them or evidence of anything contained in them in an action or proceeding in a court, except in an action or  
7 proceeding:

8 (i) to which the department is a party under the provisions of this chapter or any other taxing act; or

9 (ii) on behalf of a party to any action or proceedings under the provisions of this chapter or other taxes  
10 when the reports or facts shown by the reports are directly involved in the action or proceedings.

11 (b) The court may require the production of and may admit in evidence only as much of the reports or  
12 of the facts shown by the reports as are pertinent to the action or proceedings.

13 (3) This section does not prohibit:

14 (a) the delivery to a taxpayer or the taxpayer's authorized representative of a certified copy of any return  
15 or report filed in connection with the taxpayer's tax;

16 (b) the publication of statistics classified to prevent the identification of particular reports or returns and  
17 the items of particular reports or returns; or

18 (c) the inspection by the attorney general or other legal representative of the state of the report or return  
19 of any taxpayer who brings an action to set aside or review the tax based on the report or return or against whom  
20 an action or proceeding has been instituted in accordance with the provisions of 15-30-311.

21 (4) Reports and returns must be preserved for at least 3 years and may be preserved until the  
22 department orders them to be destroyed.

23 (5) Any offense against subsections (1) through (4) is punishable by a fine not exceeding \$1,000 or by  
24 imprisonment in the county jail for a term not exceeding 1 year, or both. If the offender is an officer or employee  
25 of the state, the offender must be dismissed from office and may not hold any public office in this state for a  
26 period of 1 year after dismissal.

27 (6) This section may not be construed to prohibit the department from providing taxpayer return  
28 information and information from employers' payroll withholding reports to:

29 (a) the department of labor and industry to be used for the purpose of investigation and prevention of  
30 noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws; or

1 (b) the state fund to be used for the purpose of investigation and prevention of noncompliance, fraud,  
2 and abuse under the workers' compensation program.

3 (7) The department may permit the commissioner of internal revenue of the United States or the proper  
4 officer of any state imposing a tax upon the incomes of individuals or the authorized representative of either  
5 officer to inspect the return of income of any individual or may furnish to the officer or an authorized  
6 representative an abstract of the return of income of any individual or supply the officer with information  
7 concerning an item of income contained in a return or disclosed by the report of an investigation of the income  
8 or return of income of an individual, but the permission may be granted or information furnished only if the  
9 statutes of the United States or of the other state grant substantially similar privileges to the proper officer of this  
10 state charged with the administration of this chapter.

11 (8) The department shall furnish:

12 (a) to the department of justice all information necessary to identify those persons qualifying for the  
13 additional exemption for blindness pursuant to 15-30-112(4), for the purpose of enabling the department of  
14 justice to administer the provisions of 61-5-105;

15 (b) to the department of public health and human services information acquired under 15-30-301,  
16 pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of public  
17 assistance fraud and abuse, provided notice to the applicant has been given;

18 (c) to the department of labor and industry for the purpose of prevention and detection of fraud and  
19 abuse in and eligibility for benefits under the unemployment compensation and workers' compensation programs  
20 information on whether a taxpayer who is the subject of an ongoing investigation by the department of labor and  
21 industry is an employee, an independent contractor, or self-employed;

22 (d) to the department of fish, wildlife, and parks specific information that is available from income tax  
23 returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting and  
24 fishing licenses;

25 (e) to the board of regents information required under 20-26-1111;

26 (f) to the legislative fiscal analyst and the office of budget and program planning individual income tax  
27 information as provided in 5-12-303. The information provided to the office of budget and program planning must  
28 be the same as the information provided to the legislative fiscal analyst.

29 (g) to the department of transportation farm income information based on the most recent income tax  
30 return filed by an applicant applying for a refund under 15-70-223 or 15-70-362, provided that notice to the



applicant has been given as provided in 15-70-223 and 15-70-362. The information obtained by the department of transportation is subject to the same restrictions on disclosure as are individual income tax returns.

(h) to the state auditor all information necessary for the administration of the eligible small employer health insurance tax credit provided for in [sections 1 through 7]."

**Section 11.** Section 15-31-511, MCA, is amended to read:

**"15-31-511. Confidentiality of tax records.** (1) Except as provided in this section in accordance with a proper judicial order or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any return or report required under this chapter or any other information relating to taxation secured in the administration of this chapter; or

(b) any federal return or information in or disclosed on a federal return or report required by law or rule of the department of revenue under this chapter.

(2) (a) An officer or employee charged with custody of returns and reports required by this chapter may not be ordered to produce any of them or evidence of anything contained in them in any administrative proceeding or action or proceeding in any court, except:

(i) in an action or proceeding in which the department is a party under the provisions of this chapter; or

(ii) in any other tax proceeding or on behalf of a party to an action or proceeding under the provisions of this chapter when the returns or reports or facts shown in them are directly pertinent to the action or proceeding.

(b) If the production of a return, report, or information contained in them is ordered, the court shall limit production of and the admission of returns, reports, or facts shown in them to the matters directly pertinent to the action or proceeding.

(3) This section does not prohibit:

(a) the delivery of a certified copy of any return or report filed in connection with a return to the taxpayer who filed the return or report or to the taxpayer's authorized representative;

(b) the publication of statistics prepared in a manner that prevents the identification of particular returns, reports, or items from returns or reports;

(c) the inspection of returns and reports by the attorney general or other legal representative of the state in the course of an administrative proceeding or litigation under this chapter;

1 (d) access to information under subsection (4); ~~or~~

2 (e) the director of revenue from permitting a representative of the commissioner of internal revenue of  
3 the United States or a representative of a proper officer of any state imposing a tax on the income of a taxpayer  
4 to inspect the returns or reports of a corporation. The department may also furnish those persons abstracts of  
5 income, returns, and reports; information concerning any item in a return or report; and any item disclosed by  
6 an investigation of the income or return of a corporation. The director of revenue may not furnish that information  
7 to a person representing the United States or another state unless the United States or the other state grants  
8 substantially similar privileges to an officer of this state charged with the administration of this chapter.

9 (f) the disclosure of information to the state auditor that is necessary for the administration of the eligible  
10 small employer health insurance tax credit provided for in [sections 1 through 7].

11 (4) The department shall on request:

12 (a) allow the inspection of returns and reports by the legislative auditor, but the information furnished  
13 to the legislative auditor is subject to the same restrictions on disclosure outside that office as provided in  
14 subsection (1); and

15 (b) deliver corporation income tax data to the legislative fiscal analyst and the office of budget and  
16 program planning, but the information furnished to the legislative fiscal analyst and the office of budget and  
17 program planning is subject to the same restrictions on disclosure outside those offices as provided in  
18 subsection (1).

19 (5) A person convicted of violating this section shall be fined not to exceed \$1,000 or be imprisoned in  
20 the county jail for a term not to exceed 1 year, or both. If a public servant, as defined in 45-2-101, is convicted  
21 of violating this section, the person forfeits office and may not hold any public office or public employment in the  
22 state for a period of 1 year after conviction."  
23

24 NEW SECTION. Section 12. Appropriation -- transfers. (1) There is a health and medicaid initiatives  
25 account established in 53-6-1201, and for the biennium ending June 30, 2007, pursuant to 53-6-1201(3)(d), the  
26 account must be used as follows:

27 (a) up to \$15 million is appropriated to the state auditor for the purpose of making direct credit payments  
28 as provided for in [sections 1 through 7], and any amounts not used for direct credit payments must be  
29 transferred to the general fund to offset tax credits claimed pursuant to [sections 1 through 7];

30 (b) an amount equal to 1.65% of the revenue deposited in the account for the current fiscal year, not

to exceed \$247,305 for fiscal year 2006 and \$241,437 for fiscal year 2007, is appropriated to the state auditor's office for the administration, outreach, and publicity related to [sections 1 through 7]; and

(c) an amount equal to 0.15% of the revenue deposited in the account for the current fiscal year, not to exceed \$15,865 for fiscal year 2007, is appropriated to the department of revenue for the administration related to [sections 1 through 7].

(2) The amounts appropriated in subsection (1)(a) must be distributed monthly by the state auditor based upon the annual appropriation rate in a manner so that deposits to the account up to the amount of credits paid and claimed are fully disbursed at the end of each fiscal year on a month-by-month basis.

**Section 13.** Section 45-6-301, MCA, is amended to read:

**"45-6-301. Theft.** (1) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when the person purposely or knowingly obtains by threat or deception control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when the person purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment

1 probably will deprive the owner of the property.

2 (4) A person commits the offense of theft when the person purposely or knowingly obtains or exerts  
3 unauthorized control over any part of any public assistance provided under Title 52 or 53 by a state or county  
4 agency, regardless of the original source of assistance, by means of:

5 (a) a knowingly false statement, representation, or impersonation; or

6 (b) a fraudulent scheme or device.

7 (5) A person commits the offense of theft when the person purposely or knowingly obtains or exerts or  
8 helps another obtain or exert unauthorized control over any part of any benefits provided under Title 39, chapter  
9 71 or 72, by means of:

10 (a) a knowingly false statement, representation, or impersonation; or

11 (b) deception or other fraudulent action.

12 (6) (a) A person commits the offense of theft when the person purposely or knowingly commits  
13 insurance fraud as provided in 33-1-1202 or 33-1-1302; ~~or~~

14 (b) purposely or knowingly diverts or misappropriates insurance premiums as provided in 33-17-1102;

15 or

16 (c) purposely or knowingly receives small employer health insurance direct credit payments or a tax  
17 credit under [sections 1 through 7] to which the person is not entitled.

18 (7) A person commits the offense of theft of property by embezzlement when, with the purpose to  
19 deprive the owner of the property, the person:

20 (a) purposely or knowingly obtains or exerts unauthorized control over property of the person's employer  
21 or over property entrusted to the person; or

22 (b) purposely or knowingly obtains by deception control over property of the person's employer or over  
23 property entrusted to the person.

24 (8) (a) A person convicted of the offense of theft of property not exceeding \$1,000 in value shall be fined  
25 an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both.  
26 A person convicted of a second offense shall be fined \$1,000 or be imprisoned in the county jail for a term not  
27 to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined \$1,000 and be  
28 imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

29 (b) Except as provided in subsection (8)(c), a person convicted of the offense of theft of property  
30 exceeding \$1,000 in value or theft of any commonly domesticated hoofed animal shall be fined an amount not

1 to exceed \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

2 (c) A person convicted of the offense of theft of property exceeding \$10,000 in value by embezzlement  
3 shall be imprisoned in a state prison for a term of not less than 1 year or more than 10 years and may be fined  
4 an amount not to exceed \$50,000. The court may, in its discretion, place the person on probation with the  
5 requirement that restitution be made under terms set by the court. If the terms are not met, the required prison  
6 term may be ordered.

7 (9) Amounts involved in thefts committed pursuant to a common scheme or the same transaction,  
8 whether from the same person or several persons, may be aggregated in determining the value of the property."  
9

10 **Section 14.** Section 53-6-1201, MCA, is amended to read:

11 **"53-6-1201. Special revenue fund -- health and medicaid initiatives.** (1) There is a health and  
12 medicaid initiatives account in the state special revenue fund established by 17-2-102. This account is to be  
13 administered by the department of public health and human services.

14 (2) There must be deposited in the account:

15 (a) money from cigarette taxes deposited under 16-11-119(1)(c); and

16 (b) money from taxes on tobacco products other than cigarettes deposited under 16-11-206(1)(b).

17 (3) This account may be used only to provide funding for:

18 (a) the state funds necessary to take full advantage of available federal matching funds in order to  
19 maximize enrollment of eligible children under the children's health insurance program, provided for under Title  
20 53, chapter 4, part 10, and to provide outreach to the eligible children. The increased revenue in this account  
21 is intended to increase enrollment rates for eligible children in the program and not to be used to support existing  
22 levels of enrollment based upon appropriations for the biennium ending June 30, 2005.

23 (b) a new need-based prescription drug program established by the legislature for children, seniors,  
24 chronically ill, and disabled persons that does not supplant similar services provided under any existing program;

25 (c) increased medicaid services and medicaid provider rates. The increased revenue is intended to  
26 increase medicaid services and medicaid provider rates and not to supplant the general fund in the trended  
27 traditional level of appropriation for medicaid services and medicaid provider rates.

28 (d) an offset to loss of revenue to the general fund as a result of new tax credits or to fund new  
29 programs to assist eligible small employers businesses with the costs of providing health insurance benefits to  
30 eligible employees, ~~if these tax credits or programs are established by the legislature after the effective date of~~

~~this section and the cost of administering the tax credit or program.~~

(4) Until the programs or credits described in subsections (3)(b) and (3)(d) are established, the funding must be used exclusively for the purposes described in subsections (3)(a) and (3)(c).

(5) The phrase "trended traditional level of appropriation", as used in subsection (3)(c), means the appropriation amounts, including supplemental appropriations, as those amounts were set based on eligibility standards, services authorized, and payment amount during the past five biennial budgets.

(6) The department of public health and human services may adopt rules to implement this section."

**NEW SECTION.** **Section 15. Codification instruction.** [Sections 1 through 7] are intended to be codified as an integral part of Title 33, chapter 22, and the provisions of Title 33, chapter 22, apply to [sections 1 through 7].

**NEW SECTION.** **Section 16. Effective date.** [This act] is effective July 1, 2005.

**NEW SECTION.** **Section 17. Applicability.** [This act] applies to tax years beginning after December 31, 2005.

- END -